IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

~~No. 74-1426~~
74-1426

STATE OF ALABAMA,

Petitioner

-vs-

THOMAS R. PRINCE,

Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINION BELOW

The Opinion of the United States Court of Appeals for the Fifth Circuit is reported at 507 F 2d 693.

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit reversing the judgment of the United States District Court for the Northern District of Alabama and remanding the cause with directions that the Writ of Habeas Corpus issue forthwith directing the discharge of the Respondent from custody was entered on January 31, 1975. Petitions for re-hearing and re-hearing en banc were denied on

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## QUESTIONS PRESENTED

1. Whether the Sixth Amendment guaranty of a speedy trial is applicable to the states through the Due Process Clause of the Fourteenth Amendment to the United States Constitution?

2. Whether, upon a speedy trial issue being raised by an accused, a state has a constitutional duty to make a diligent, good-faith effort in attempting to secure the presence of the accused for trial, when he is incarcerated in another jurisdiction?

3. Whether a delay of nearly nine (9) years in granting a trial is a denial of the right to a speedy trial as guaranteed by the Sixth Amendment to the United States Constitution, when the delay results in prejudice to the defense and person of the accused?

4. Whether prejudice to the accused can be presumed where a wanting state made no effort whatsoever during a period of nearly nine (9) years to procure for trial the presence of the accused from another jurisdiction where he was incarcerated?

5. Whether, after a delay of great magnitude in bringing the accused to trial, the state has a burden of proving that the accused suffered no serious prejudice beyond that which ensues from ordinary and inevitable delays?

6. Whether a delay of nearly nine (9) years in bringing an accused to trial is of itself sufficient to entitle him to be discharged?

7. Whether there should be a dismissal of all charges and the vacating of any resulting convictions where an accused has been prejudiced by a delay of nearly nine (9) years in being brought to trial?

## CONSTITUTIONAL PROVISIONS INVOLVED

1. The Sixth Amendment to the Constitution of the United States in pertinent part provides as follows:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by

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suffered no serious prejudice beyond that which ensues from ordinary and inevitable delays?

6. Whether a delay of nearly nine (9) years in bringing an accused to trial is of itself sufficient to entitle him to be discharged?

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## CONSTITUTIONAL PROVISIONS INVOLVED

1. The Sixth Amendment to the Constitution of the United States in pertinent part provides as follows:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state..."

2. The Fourteenth Amendment to the Constitution of the United States, Section One, provides as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

## STATEMENT OF THE CASE

During the evening of May 7, 1962, an A&P Grocery Store located in Birmingham, Alabama, was robbed by a black male using a sawed-off shotgun. During the robbery approximately One Hundred Sixty and no/100 ($160.00) Dollars was taken from a cashier, Mrs. Jean McKinney. A shot was fired by the culprit as he departed from the store, but no injuries were inflicted. Thereafter the Respondent was allegedly identified as the robber by two employees of the subject store.

The indigent, Black Respondent was arrested in Los Angeles, California, on, to-wit, June 29, 1962, for crimes committed within Los Angeles County. On November 27, 1962, two judgments of conviction were imposed upon the Respondent by the Los Angeles Superior Court for violation of Penal Code Sections 211 and 487.1, first degree robbery and grand theft respectively. Concurrent sentences of imprisonment for five years to life and six years to ten years were imposed. The Respondent was continuously incarcerated thereafter within the California Penal System until February 22, 1971, at which time he was paroled and transferred to the Jefferson County Jail, Birmingham, Alabama, by virtue of detainers for robbery which had been lodged against him approximately nine (9) years earlier. Such was based upon indictments being returned by the Jefferson County Grand Jury on May 10, 1962, and again on

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In fact a letter from the State Solicitor for the Tenth Judicial Circuit of Alabama, Jefferson County, to the Los Angeles County Sherrif's Department read in part:

> "...Please let us know the status of the pending charges there and the likelihood of his being returned . . . here. If he should become available please ascertain if he will waive extradition and if so, . . please notify this office and we

shall promptly send our agent for him." (emphasis added)

The response from the California authorities was in kind:

> "Your Warrant has been filed as a Detainer... and you will further be advised if and when the subject is available to your department." (emphasis added)

Subsequent to his conviction, the Respondent was transferred to the California Department of Corrections (CDC) Reception-Guidance Center at Chino, California. At that time CDC contacted the Sherrif- of Jefferson County, Alabama, inquiring the existence of any detainers against the Respondent. The Solicitor responded that there were in existence outstanding Indictments against the Respondent and requested that CDC "please advise the approximate release date... This office will extradite at our expense." In reply CDC advised: "You will be given the usual sixty (60) days notice prior to his release from the Department of Corrections." Thereafter there was a series of correspondence between the Solicitor's office of Jefferson County, Alabama, and the CDC with each letter from the Solicitor's office reiterating Alabama's intention to return the Respondent for trial when available.

Since the filing of the subject detainers, beginning in 1963, the Respondent continuously requested the State of Alabama to dismiss the charges and withdraw the detainers on the ground that

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Since the filing of the subject detainers, beginning in 1963, the Respondent continuously requested the State of Alabama to dismiss the charges and withdraw the detainers on the ground that he had been and was being denied his right under the United States Constitution to a speedy trial and to due process of law. In effect, the Respondent, by such action made a demand upon the State of Alabama to bring him to trial or dismiss the charges. During the nine year period of incarceration by the California Respondent on a continuing regular basis contacted various proper authorities within the State of Alabama, including the District Attorney (Solicitor), alleging a denial of his constitutional right to a speedy trial. In the course of the

Respondent's lengthy incarceration letters were received by the CDC from the State of Alabama to the effect that Alabama was ignoring the request of the Respondent in reference to commencing prosecution, and that he would be returned to Alabama "when available". In the nine (9) year period the Respondent also filed numerous petitions addressed to Federal and State courts within the State of California raising the issue of his right to a speedy trial in Alabama.

A formal Motion to Dismiss the Alabama charges, addressed to the Circuit Court of the Tenth Judicial Circuit, Birmingham, Alabama (the Court in which the charges were pending)was filed on July 9, 1968. In the Motion the Respondent, who once more contended a denial of his right t o a speedy trial and to due process of law, requested a hearing on the matter, a dismissal of the charges, withdrawal of the detainers, and for any and all relief the Court would deem appropriate. The subject Motion was mailed in care of the District Attorney of theCircuit Court, Birmingham, Alabama, who unfortunately merely placed same in an office file and did not file such with the Court. Not only did the Office of the District Attorney fail to deliver the Motion as it was addressed to the Circuit Court, but even denied the Respondent the courtesy of responding in any manner whatsoever to the Motion. Therefore the Respondent submitted to the Supreme Court of Alabama a Motion for Writ of Mandamus alleging that he had been deprived of the rights as aforesaid, had attempted

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Additionally, during the nine (9) year period of incarceration in California, the Respondent filed many petitions addressed to the Courts within the State of California. Each petition sought relief from the asserted denial of the right to a speedy trial in Alabama. Petitions were

filed in the Superior Court of Marin County, the California District Court of Appeals, the Supreme Court of California, and the United States District Court for the Northern District of California. On October 15, 1969, an order and opinion was issued by the Honorable Robert F. Peckham of the United States District Court for the Northern District of California. Even though the Respondent's Petition was denied without prejudice on procedural grounds, the Court held that since 1963:

> "...the Petitioner has regularly and faithfully attempted to have these charges tried and that the State of Alabama is under an obligation to make reasonable efforts to accord this right to Petitioner."

In late 1970, just two months prior to his parole from the California penal system and voluntary waiver of extradition to Alabama, the Respondent had refused parole due to theform and conditions of such. Upon his parole status being rectified, the Respondent consented to the parole and was transferred to the State of Alabama in February, 1971.

Subsequent to the transfer of th Respondent to the Jefferson County Jail, Birmingham, Alabama, a Motion to Dismiss Indictments was filed on his behalf in the Circuit Court of the Tenth Judicial Circuit. On July 15, 1971, at the request of the Office of the District Attorney and over objections by the defense, a hearing on same was passed another two months until September 9, 1971. Subsequent to hearings pertaining to the

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On November 9, 1971, a Petition for Writ of Habeas Corpus (Case No. CA 71-1003) was filed in the United States District Court for the Northern District of Alabama, Southern Division. The Petition asserted that the Respondent was unlawfully incarcerated due to an effective denial of his right to a speedy trial as guaranteed by the Sixth Amendment made obligatory upon the states by virtue of thedue process clause of th Fourteenth Amendment to the United States Constitution. It was contended the Respondent was prejudiced as follows:

A. Preparation of adequate defense has been seriously handicapped through the death of three necessary witnesses;

B. During the passage of the many years of delay, the memory of those witnesses who may be available has been impaired by the excessive passage of time;

C. The Relator (Respondent) has been compelled to face continued anxiety due to the prolonged threat of criminal prosecution within the State of Alabama; and,

D. The detainers lodged against the Relator (Respondent) by the State of Alabama adversely affected his parole status, custodial status and in-prison liberty.

The Petition for Writ of Habeas Corpus was denied without a hearing on January 12, 1972, by the Honorable C.W. Allgood, Judge of the United States District Court, who acted upon the recommendation and opinion of the United States Magistrate, Honorable R. Macey Taylor. The United States District Court for the Northern District of Alabama on January 17, 1972, granted the Respondent's Motion to be allowed to proceed in forma pauperis on appeal to the United States Court of Appeals for the Fifth Circuit and entered a Certificate of Probable Cause.

While the aforementioned appeal was pending before the U.S. Court of Appeals for the Fifth Circuit, another Motion to Dismiss Indictment was filed on February 2, 1972, in the Circuit Court for the Tenth Judicial Circuit of Alabama, once more alleging the Respondent had been denied his constitutional right to a speedy trial. A hearing was held on [illegible] March 6, 1972, and at the conclusion of same the subject

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While the aforementioned appeal was pending before the U.S. Court of Appeals for the Fifth Circuit, another Motion to Dismiss Indictment was filed on February 2, 1972, in the Circuit Court for the Tenth Judicial Circuit of Alabama, once more alleging the Respondent had been denied his constitutional right to a speedy trial. A hearing was held on, to-wit, March 6, 1972, and at the conclusion of same the subject Motion to Dismiss was denied. Even in denying such, the Court did recognize that the Respondent did make a demand upon the State of Alabama to bring him to trial. The cause then proceeded to trial on, to-wit, March 7, 1972, and on, to-wit, March 8, 1972, the jury returned a verdict finding the Respondent guilty of robbery, and fixed punishment at twenty years imprisonment. Thereafter the conviction was appealed to the Alabama Court of Criminal Appeals on an indigent basis due to the pauper status of the Respondent.

On July 19, 1972, the United States Court of Appeals for the Fifth Circuit vacated and remanded the cause with instructions..."that the petition be dismissed for want of jurisdiction without prejudice to the Respondent to refile his Petition at a time when can present a state court judgment to the United States District Court." Prince v. Bailey, 464 F 2d 544 (1972). In effect, the United States Court of Appeals ruled that since the Respondent had not been brought to trial at the time the Petition for Writ of Habeas Corpus was filed in the UnitedStates District Court for the Northern District of Alabama, the cause must be remanded on procedural grounds. It should be noted that a footnote to the opinion stated the following in reference to the merits of the Respondent's contention:

> "This was by no means the first occasion on which the petitioner asserted his right to a speedy trial. In 1968 petitioner filed with Alabama authorities a motion to dismiss the Alabama indictments for failure to grant him a speedy trial. In addition, petitioner claims that even before 1968 he filed numerous motions, letters, and other papers asserting the right (primarily motions to dismiss the indictment for denial of a speedy trial) in assorted courts and district attorney's offices throughout California and Alabama, including at least two motions filed with the trial court. The State of Alabama claims that petitioner's motions to dismiss the indictments for lack of a speedy trial do not represent a demand for a speedy trial , since petitioner may be asserting a desire that the charges be dropped,

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A second Petition for Writ of Habeas Corpus (CA 72-694) was filed on August 1, 1972, in the United States District Court for the Northern

District of Alabama. In once more denying relief, the Court stated:

> "This Court should not reach a decision on the constitutional question until the highest appellate court in Alabama has had the matter presented to it on direct appeal or otherwise."

The United States Court of Appeals for the Fifth Circuit again denied relief upon procedural grounds on March 26, 1973, and stated (Case No. 72-3610):

> "While Prince has now been convicted and sentenced to serve a term of 20 years on the robbery charges which were the subject of his former habeas corpus proceedings, this second petition for relief is still premature. His conviction is on direct appeal in the state court system of Alabama. 28 USC supra 2254 (b) and (c) make it crystal clear that courts of the United States are bound to refrain from exercising their power under supra 2254 so long as a petitioner has any effective right to obtain relief from constitutional errors under remedies provided by the courts of the state ordering his custody." Prince v. State of Alabama, 476 F 2d 298

On the following day, March 27, 1973, the Alabama Court of Criminal Appeals affirmed the aforesaid conviction. Thereafter, a Motion for Re-hearing with brief in support of same was filed with said Court which denied relief on May 8, 1973. Subsequently a Petition for Writ of Certiorari was filed in behalf of the Respondent before the Supreme Court of Alabama, which also denied relief.

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Having exhausted all available state remedies, for the third time a Petition for Writ of Habeas Corpus was filed in the United States District Court for the Northern District of Alabama on June 21, 1973 (CA 73-A-601). In a thorough and most exhaustive opinion by the Honorable R. Macey Taylor, United States Magistrate, on July 25, 1973, it was concluded and recommended to the United States District Court that the Respondent had been denied the right to a speedy trial and the Petition for Habeas Corpus be granted. The conclusion of the opinion stated:

> "It is the Magistrate's opinion and conclusion that the reasoning of this Court in denying habeas relief in CA 71-1003 is no longer tenable. As pointed out hereinabove, the demand-waiver rule can no longer be automatically applied. In the instant case, serious criminal charges were pending against the Petitioner for a period of approximately nine years. During substantially all of this period of time, Petitioner's whereabouts were known to prosecuting officials of Jefferson County, Alabama. During this entire period of time, the State of Alabama made no effort to secure the presence of the Petitioner fod trial. Prior to 1968, Petitioner made repeated requests that the charges against him be dismissed. In 1968, Petitioner submitted a motion to prosecuting officials of the Circuit Court of Jefferson County demanding that the charges be dismissed based on the denial of a speedy trial.
>
> Based upon the facts in this case and the applicable legal authorities, it is the Magistrate's conclusion that Petitioner has been denied a speedy trial. The Magistrate further concludes that the denial of a speedy trial cannot be justified under the applicable controlling authorities. It is therefore recommended that the petition for habeas corpus be granted."

In a brief Order dated July 31, 1973, the Honorable C.W. Allgood, United States District Judge, refused to follow the recommendation to the United States Magistrate and denied relief. Thereafter the Court granted a Motion for a Certificate of Probable Cause and a Motion for Assignment of Counsel and Granting Leave to Appeal as Poor Person. The cause was again appealed to the United States Court of Appeals for the Fifth Circuit,

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On January 31, 1975, the United States Court of Appeals for the Fifth Circuit reversed the judgment of the United States District Court and remanded the cause with directions that the Writ of Habeas Corpus issue forthwith directing the discharge of the Respondent from custody. Prince v. State of Alabama, 507 F 2d 693.

## ARGUMENT

A STATE'S DELAY OF MORE THAN EIGHT YEARS BEFORE BRINGING AN ACCUSED TO TRIAL RESULTS IN A VIOLATION OF THE CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL AND DUE PROCESS OF LAW, WHERE THE DELAY RESULTED IN PREJUDICE TO THE ACCUSED AND WHERE THE STATE CAN SUGGEST NO TENABLE REASON FOR DEFERRING THE TRIAL IN FACE OF THE ACCUSED'S DILIGENT AND REPEATED EFFORTS TO HAVE THE PENDING CHARGES DISMISSED AND FOR SAID CONSTITUTIONAL DEPRIVATION WHILE HE WAS SERVING A PRISON SENTENCE IN ANOTHER JURISDICTION.

The basic issue before this Honorable Court is whether the delay in excess of nine (9) years by the State of Alabama in even attempting to bring the Respondent to trial was in violation of his right to a speedy trial as guaranteed by the Sixth Amendment to the United States Constitution made obligatory upon the states through the Fourteenth Amendment of said Constitution. It is strongly asserted the issue should be resolved in the affirmative, in view of the facts which clearly demonstrate:

A. An inordinate lengthy period of delay;

B. No effort, directly or indirectly, by the State of Alabama to return the Respondent to Alabama for trial ;

C. The Respondent's continued assertion over many years for a dismissal based upon a denial of his constitutional right to a speedy trial, thus placing the Alabama authorities upon notice that action should be taken towards bringing him to trial; and

D. The prejudice suffered by the Respondent as a result of the inordinate delay, including not only anxiety and other hampered defense due to the death of several vital witnesses and a loss of memory pertaining to the night in question.

The facts in the case at hand are rather simple. In 1962 the Respondent was accused of committing two (2) robberies in Birmingham, Alabama. No warrant was served against him in Alabama. After his arrest and conviction in California upon crimes committed in that jurisdiction, a detainer was placed against the Respondent by the State of Alabama for

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The facts in the case at hand are rather simple. In 1962 the Respondent was accused of committing two (2) robberies in Birmingham, Alabama. No warrant was served against him in Alabama. After his arrest and conviction in California upon crimes committed in that jurisdiction, a detainer was placed against the Respondent by the State of Alabama for the Respondent upon his final release from custody. During the ensuing years while the Respondent was in the California Penal System, the State of Alabama at no time made any overt effort towards effectuating the return of the Respondent for trial. The detainer, in essence, meant that the State of Alabama desired to extradite the Respondent when he had completed serving the sentence in California. There was never any attempt by Alabama to "borrow" the Respondent either through the Interstate Compact Agreement or by mutual agreement between the two states. Consequently the Respondent on a continuing basis beginning in 1963, requested the State of Alabama to dismiss the charges pending thus bring into issue his constitutional guarantee of a speedy trial. Such not only

included letters to the District Attorney of Jefferson County and varous state officials, but also a Motion to the Circuit Court of The Tenth Judicial Circuit, Jefferson County, mailed in care of the Office of the District Attorney and a Motion for Writ of Mandamus to the Supreme Court of Alabama. The former Motion was ignored by the Office of the District Attorney and never delivered to the Circuit Court, and the latter Motion for Writ of Mandamus was denied by the Supreme Court without opinion. Finally in February, 1971, the Respondent was paroled by the State of California, waived extradition, and was transferred to the Jefferson County Jail, Birmingham, Alabama, to stand trial. Thereafter a Motion to Dismiss Indictments was filed in behalf of the Respondent in the Circuit Court of the Tenth Judicial Circuit. Such alleged the Respondent had been denied his right to a speedy trial as guaranteed by the Sixth Amendment to the United States Constitution and made applicable to the states by virtue of the Due Process Clause of the Fourteenth Amendment. Hearings were held upon the Motion and such was denied on October 22, 1971. Prior to the Respondent being brought to trial a Petition for Writ of Habeas Corpus was filed in the United States District Court for the Northern District of Alabama asserting the right to a speedy trial issue. After a denial of relief, such was appealed to this Honorable Court which vacated and remanded such for want of jurisdiction without prejudice since the Respondent

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After exhausting all state remedies through appeal, another Petition for Writ of Habeas Corpus was filed in the United States District Court fod the Northern District of Alabama. As previously noted, the Court denied the Petition even though the United States Magistrate made a recommendation to the contrary six days previously on July 25, 1973. The United States Court of Appeals for the Fifth Circuit on January 31, 1975, reversed the judgment of the United States District Court and remanded the cause with directions that the writ of habeas corpus be issued discharging the Respondent from custody. Prince v. Alabama, 507 F. 2d 693.

Until relatively recently few guidelines had been established to aid courts in determining whether an indicidual has been denied his right to a speedy trial under the Sixth Amendment to the United States Constitution. Even though today there are no exact rules, it is now clear a court must utilize a balancing test and direct its attention to four primary areas of investigation: (1) length of delay; (2) the reason for the delay; (3) the defendant's assertion of his rights; and (4) prejudice to the defendant. The aforegoing principles were plainly established in the 1972 United States Supreme Court decision of Barker v. Wingo, 407 US 514, 33 L Ed 2d 101, 92 S Ct 2182. Even though the Court in Barker denied relief to the Appellant, many questions previously unresolved regarding speedy trial standards were answered. The Supreme Court in that case

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> "We reject, therefore, the rule that a defendant fails to demand a speedy trial forever waives his right. This does not mean, however, that the defendant has no responsibility to assert his right. We think the better rule is that the defendant's assertion of or failure to assert his right to a speedy trial is one of the factors to be considered in inquiry into the deprivation of the right.
>
> In ruling that a defendant has some responsibility to a speedy trial claim, we do no depart from our holdings in other cases concerning the waiver of fundamental rights, in which we have placed the entire responsibility on the prosecution to show that the claimed waiver was knowingly and voluntarily made...But the rule we announced today, which comports with constitutional principles, places the primary burden on the courts and the prosecutors to assure that cases are brought to trial."

The United States Court of Appelas made a direct reference to Barker v. Wingo, supra, in a footnote to its first decision in this cause when it stated:

> "However, we feel compelled to observe that the 'demand waiver' rule on which the State of Alabama places considerable reliance and on which the Court below based its determination of the merits has been recently modified (if not rejected) by the Supreme Court. See Barker v. Wingo..." Prince v. Bailey, 464 F 2d 544 (1972)

Two months after the holding of Barker v. Wingo, supra, the United States District Court for the Eastern District of Virginia, Richmond Division, held that a state prisoner had been denied the constitutional right toa speedy trial and therefore voided the conviction. Clark v. Oliver, 346 F Supp 1345 (1972). The facts in that case were similar in many aspects to those in the present cause, even though the delay in bringing the Appellant to trial was over five years greater in the present situation. In 1952, Fred Lee Clark the petitioner, was indicted in Virginia for felonious shooting with intent to maim. At that time he was incarcerated in North Carolina. During the period of his detention in North Carolina he was informed that Virginia had a detainer against him. As in the present cause, no effort was made by the Virginia authorities to borrow Clark for trial. Yet, in contrast to the Respondent's plight, the petitioner never made a speedy trial demand of any type. Subsequently in 1958 Clark was brought to trial in Virginia and convicted,

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> "...any appreciable delay between arrest and trial in and of itself raised the issue and at the very least places on the prosecution a heavy burden of demonstrating that the defendant's Sixth Amendment right has not been abridged."
>
> "In the instant case, the Court finds that there was a responsibility on the Virginia officials after the filing of the detainer referred to in the stipulated facts, to make efforts to procure temporary release of the defendant from North Carolina, and to hold a prompt hearing in accordance with the Sixth Amendment guaranty of the right to a speedy trial. This issue has been settled in this circuit in the case of Pitts v. State of North Carolina, 395 F. 2d 182 (4th Cir. 1968). Indeed the basic protections intended to be afforded by a speedy trial are equally,

> if not more, significant in situations wherein the accused is imprisoned in another jurisdiction awaiting trial."

The most recent decision pertaining to the issue at hand rendered by the United States Supreme Court prior to Barker v. Wingo, supra, was the 1970 case of Dickey v. Florida, 398 U.S. 30, 26 L Ed 2d 26, 90 S Ct 1564, which is rather similar in many respects to the present case. A detainer was lodged against the accused in the Dickey case by the State of Florida while he was in federal custody. After seven years had passed since the ocurrence of the alleged crime, Florida secured the presence of the accused for trial. The accused fuled a Motion to Quash the Information alleging the delay had been so prejudicial as to make a fair trial impossible. The Motion was denied and the accused was convicted for robbery. The Supreme Court, in directing a complete dismissal of the charge, found the State's delay of more than seven years before bringing the accused to trial constituted a denial of the constitutional right to a speedy trial, particularly where the accused was prejudiced by the delay and had made repeated demands to secure a trial. Chief Justice Burger, in delivering the opinion of the Court stated:

> "Here the State of Florida brought the petitioner back to Florida, tried and convicted him. Petitioner's challenge is directly to the power of the State to try him after the lapse of almost eight years during which he repeatedly demanded and was denied a trial.

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> "Here the State of Florida brought the petitioner back to Florida, tried and convicted him. Petitioner's challenge is directly to the power of the State to try him after the lapse of almost eight years during which he repeatedly demanded and was denied a trial.
>
> The right to a speedy trial is not a theoretical or abstract right but one rooted in hard reality in the need to have the charges promptly exposed. If the case for the prosecution calls on the accused to meet charges rather than rest on the infirmaties of the prosecution's case, as is the defendant's right, the time to meet them is when the case is fresh. Stale claims have never been favored by the law, and far less so in criminal cases. Although a great many accused persons seek to put off the confrontation as long as possible, the right to a prompt inquiry into the criminal charges is fundamental and the duty of the charging authority is to provide a prompt trial. This is brought sharply into focus when, as here, the accused presses for an early confrontation with his accusers and with the State. Crowded dockets, the lack of judges and lawyers, and other factors no doubt make some delays inevitable. Here however, no valid reason for the delay existed; it was exclusively for the convenience of the State. On this record the delay with its consequent prejudice is intolerable as a matter of fact and impermissible as a matter of law."

As previously detailed the Respondent, while in the custody of the State of California from 1963 through 1971, made repeated demands upon the State of Alabama to dismiss the pending charges and withdraw the detainers. The demands, which were in the form of letters and formal petitions, were based upon the assertion that the Respondent had been denied the right to a speedy trial as guaranteed by the United States Constitution. At no time during the eight year period did the State of Alabama seek the return of the Respondent for trial until he was finally granted parole from the California penal system. In applying the rationale of Dickey v. Florida, supra, the State of Alabama had an obligation to make a good faith effort in attempting to seek the return of the Respondent for trial. The failure to do so resulted in great prejudice to the Respondent as supported by the record and common logic.

In Strunk v. U.S., 412 U.S. 434, 93 S Ct. 2260 37 L Ed 56 (1973), this Court gave an implicit indication that the process of the speedy trial assertion inquiry might properly be directed toward the question whether the prosecution is placed "on notice" of the defendant's speedy trial claim. In that case the Court said:

> "The entire course of events from the time of arrest through the Court of Appelas plainly placed the Government on notice that the speedy trial issue was being preserved by the accused and would be pressed, as indeed it has been." 412 U.S. 436,

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There is no question from the record in the case at hand that the Respondent did suffer prejudice due to the extreme delay in his being brought to trial. The Respondent, during speedy trial hearings in the Circuit Court of the Tneth Judicial Circuit, Birmingham, Alabama testified that he had been prejudiced as follows:

A. Preparation of an adequate defense has been seriously handicapped through the death of three necessary witnesses;

B. During the passage of the many years of delay, the memory of those witnesses wh o may be available had been impaired by the excessive passage of time;

C. The Relator (Respondent) has been compelled to face continued anxiety due to the prolonged threat of criminal prosecution within the State of Alabama; and

D. The detainers lodged against the Relator (Respondent) by the State of Alabama adversely affected his parole status, custodial status and in-prison liberty.

Even without such evidence, the United States Supreme Court has held that such prejudice is "self evidence" where a long delay in bringing the accused to trial exists. Smith v. Hooey, 393 U.S. 374, 21 L Ed 2d 607, 89 S Ct 575 (1969). In that the case the accused, while in federal custody for nearly seven years, periodically asked the State of Texas, which had placed a detainer against him, to bring him into trial. Such requests were by various letters and motions. In referring to the prejudice suffered by one in such a position, the Supreme Court stated:

> "...Suffice it to remember that this constitutional guaranty has universally been thought essential to protect at least three basic demands of criminal justice in the Anglo-American legal system: (1) to prev ent undue and oppressive incarceration prior to public trial. (2) to minimize anxiety and concern accompanying public accusation and (3) to limit

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>
> "At first blush it might appear that a man already in prison under a lawful sentence is hardly in a position to suffer from undue and oppressive incarceration prior to trial. But the fact is that delay in bringing such a person to trial on a pending charge may ultimately result in as much oppression as is suffered by one who is jailed without bail upon an untried charge. First, the possibility that the defendant already in prison might receive a sentence at least partially concurrent with the one that he is serving may be lost forever if trial of the pending charge is postponed. Secondly, under procedures now widely practiced, the duration of his present imprisonment may be increased, and the conditions under which he must serve his sentence greatly worsened by the pendency of another criminal charge outstanding."

> "And while it might be argued that a person already in prison would be less likely than others to be affected by 'anxiety and concern accompanying public accusation', there is reason to believe that an outstanding untried charge (of which even a convict may of course be innocent) can have fully as depressive an effect upon a prisoner as upon a person who is at large..."
>
> "Finally it is self-evident that 'the possibilities that long delay will impair the ability of the accused to defend himself' are markedly increased when the accused is incarcerated in another jurisdiction. Confined in a prison perhaps far from the place where the offense covered by the outstanding charge allegedly took place, his ability to confer with potential defense witnesses, or even to keep track of their whereabouts, is obviously impaired. And while 'evidence and witnesses disappear memories fade, and events lose their perspective', a man is isolated in prison is powerless to exert his own investigative efforts to mitigate these erosive effects of the passage of time." Smith v. Hooey, supra

In 1966 the United States Supreme Court clearly indicated that a defendant need not show prejudice to prevail in an assertion that he has been denied the right to a speedy trial. Klopfer v. North Carolina, 386 U.S. 213, 18 L Ed 2d 1, 87 S Ct. 988. Even though the fact in the Klopfer cae are quite distinct from those in the present situation the Court, in deciding that the Sixth Amendment guarantee of an accused's right to a speedy trial is binding upon the states through the Fourteenth Amendment to the United States Constitl tion, held that the pendency of

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In recent years there has been a very apparent trend toward demanding a showing of due diligence by prosecutors to secure the presence for trial in their own jurisdiction of an accused imprisoned or held for a substantial period in another soverign. In the case of May v. Georgia, 409 F 2d 203 (1969), the appellant while serving a twenty year sentence in the State of Florida was indicted by the State of Georgia on three counts of robbery, the United States Court of Appeals for the Fifth Circuit held:

> "there is a duty on the State of Georgia to make a 'diligent, good faith effort' to bring appellant before the appropriate state court for trial, provided he has made sufficient demand within the meaning of Hooey for a trial." (emphasis added)

The Court of Appeals for the District of Columbia, in dismissing a federal indictment against a defendant whose trial had been delayed seven and one half years because of incarceration in a state prison on another charge, noted:

> "...imprisonment (in New York State) does not excuse the Government's long delay in bringing the defendant to trial here, in the absence of a showing that the Government at a reasonably early date sought and was unable to obtain his return for trial." Taylor v. U.S., 99 U.S. App D.C. 183, 388 F. 2d 259, 61 (1956)

In the case at hand the State of Alabama never made any effort to return the Respondent to trial until the State of California was in a position to grant parole. To say the State of Alabama even came close to making a diligent, good faith effort to return the Respondent to Alabama for trial would be a complete fantasy.

Ofcourse, the length of sentence received in the holding state is of utmost importance in deciding any case with facts such as those in the one presently before this Court. As the Court said

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In the case at hand the State of Alabama never made any effort to return the Respondent to trial until the State of California was in a position to grant parole. To say the State of Alabama even came close to making a diligent, good faith effort to return the Respondent to Alabama for trial would be a complete fantasy.

Ofcourse, the length of sentence received in the holding state is of utmost importance in deciding any case with facts such as those in the one presently before this Court. As the Court said in U.S. v. Banks, 370 F. 2d 141 (1966):

"A short period of confinement...may justify delay in bringing a defendant to trial on other charges. On the other hand, if the defendant has a number of years to serve in his present confinement, no substantial delay in the initiation of efforts to obtain custody of him for the purpose of trial would be warranted... incarceration elsewhere...is not an excuse for inaction over a period of months..." (emphasis added)

The case of Pitts v. North Carolina, 395 F 2d 182 (1968) concerned a defendant who was convicted of burglary in 1949 in South Carolina and received a sentence of twenty one years imprisonment. A detainer from North Carolina was placed against him for the alleged crime of armed robbery. The defendant was returned to North Carolina upon his release in 1964 and subsequently found guilty and sentenced from ten to fifteen years. In granting relief the Court said:

> "Because this constitutional guarantee is so basic as to a fair trial, courts have made it abundantly clear that after a delay of this magnitude, it is not the defendant who must bear the burden of showing prejudice, but the state which must carry the obligation of proving 'that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay."

This Court is not concerned with a delay as great as that in the Pitts decision, but certainly the almost nine year period of inaction by the State of Alabama must certainly be considered of great "magnitude" and "inordinate". Even though the Respondent made repeated demands upon various authorities in Alabama, the State of Alabama made no effort in attempting to procure the presence for trial. In fact, no acceptable or logical explanation has been tendered for the delay. The prejudice suffered by the Respondent, as formerly outlined, is without question. Not only did the Respondent affirmatively establish prejudice during the speedy trial hearing in the Circuit of the Tenth Judicial Circuit

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parole due to the detainers and pending charges in Alabama. Further, the Respondent suffered great anxiety which naturally flows from such an excessive delay including two nervous breakdowns.

## CONCLUSION

For the foregoing reasons it is respectfully submitted that the Writ of Certiorari should be denied.

DATED: June 27, 1975.

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## CERTIFICATE OF SERVICE

I, Robert R. Bryan, attorney for the Respondent and a member of the Bar of the Supreme Court of the United States, hereby certify that on this the 27th day of June, 1975, I did serve the requisite number of copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari on the Attorney General for the State of Alabama by mailing said copies to him, postage prepaid, and addressed as follows:

Hon. William Baxley
Attorney General for the State of Alabama

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2101 Second Avenue North
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